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*Attorneys for Plaintiff State of Oregon*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

FEDERAL TRADE COMMISSION,  
STATE OF ARIZONA,  
STATE OF CALIFORNIA,  
DISTRICT OF COLUMBIA,  
STATE OF ILLINOIS,  
STATE OF MARYLAND,  
STATE OF NEVADA,  
STATE OF NEW MEXICO,  
STATE OF OREGON, and  
STATE OF WYOMING,

Plaintiffs,

*Plaintiffs,*

v.

THE KROGER COMPANY and ALBERTSONS  
COMPANIES, INC.,

Defendants.

Case No. 3:24-cv-00347

**PLAINTIFF STATES' UNOPPOSED  
MOTION TO EXTEND TIME TO  
MOVE FOR ATTORNEYS' FEES**

### **LR 7-1 CERTIFICATION**

Counsel for Plaintiff States has conferred with counsel for Defendants concerning this motion for extension of time for filing a motion for attorneys fees and costs. The Defendants agreed to the extension which would give Plaintiff States until February 14, 2025, to file their motion. At Defendants' request, Plaintiff States have agreed to a similar extension of time for Defendants opposition brief.

### **MOTION**

Plaintiffs, the states of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia, (collectively Plaintiff States), move this Court for an order extending the time for Plaintiff States to file a motion for attorneys' fees and costs, pursuant to Fed. R. Civ. P. 6(b)(1) and 54(d) and LR 54. Plaintiff States request this extension to allow time for the parties to confer and to attempt to reach agreement on attorneys' fees and costs issues and to eliminate the need to file multiple motions for attorneys' fees and costs.

### **MEMORANDUM**

On October 14, 2022, Defendants announced they had reached an agreement that Kroger would acquire Albertsons. On February 26, 2024, the Plaintiff States and the Federal Trade Commission filed an amended complaint for Temporary Restraining Order and Injunctive Relief to halt the proposed acquisition pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 16 of the Clayton Act, 15 U.S.C. § 26, and an award costs of this action to Plaintiff States, including attorneys' fees. Section 16 of the Clayton Act provides that "any person . . . shall be entitled to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws," including a violation of Section 7 of the Clayton Act, 15 U.S.C. §

18. Plaintiff States are “persons” under Section 16 of the Clayton Act. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-261 (1972).

On December 10, 2024, this Court issued an Opinion & Order granting Plaintiffs’ motion for preliminary injunction. On December 11, 2024, Albertsons announced it exercised its right to terminate the merger agreement with Kroger. And on December 13, 2024, the Federal Trade Commission, Kroger, and Albertsons jointly moved to dismiss the administrative complaint before the Federal Trade Commission, citing the termination of the proposed merger. Section 16 of the Clayton Act states that “[i]n any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorneys’ fee, to such plaintiff.” 15 U.S.C. § 26. Plaintiff States will seek their attorneys’ fees and costs as prevailing plaintiffs in this action.

Pursuant to Fed. R. Civ. P. 54(d)(2), a motion for claiming attorneys’ fees must be filed no later than 14 days after the entry of judgment. Prevailing parties, Plaintiff States, seek the requested extension to meaningfully meet and confer with Defendants on attorneys’ fees and costs issues. Given there are nine Plaintiff States who will request fees and costs, the two weeks provided under Fed. R. Civ. P. 54(d)(2) to file a motion for attorneys’ fees does not provide sufficient time for a full discussion and resolution of these issues. The proposed extension of time will obviate the need to file multiple fee petitions and responses.

Furthermore, granting this extension will not prejudice the Defendants as the Defendants have already received notice of the Plaintiff States’ intent to seek attorney fees and will have ample time to respond to the Motion once filed.

Accordingly, for good cause shown and with the consent of Defendants, Plaintiff States request that the Court grant an order under Fed. R. Civ. P. 54(d)(2) extending the time for Plaintiff States to file a motion for attorneys' fees and costs to February 14, 2025.

Dated: December 23, 2024.

Respectfully submitted,

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**Certificate of Service**

I certify that on the date noted below, I caused a true and correct copy of the Plaintiff States' Memorandum in Support of Motion to Extend Time to Move for Attorneys' Fees to be served upon the parties of record through the Court's ECF system.

Dated: December 23, 2024.

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 622 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

Dated: December 23, 2024.

LARKINS VACURA KAYSER LLP

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